

105TH CONGRESS
1ST SESSION

H. R. 2743

To reduce the fractionated ownership of Indian lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1997

Mr. YOUNG of Alaska (by request) introduced the following bill; which was referred to the Committee on Resources

A BILL

To reduce the fractionated ownership of Indian lands, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Land Consoli-
5 dation Amendment Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In the 1800’s and early 1900’s, the United
9 States sought to assimilate Indian people into the
10 surrounding non-Indian culture by allotting tribal
11 lands to individual tribal members.

1 (2) Many trust allotments were taken out of
2 trust status and sold by their Indian owners.

3 (3) The trust periods for trust allotments have
4 been extended indefinitely; however, because of the
5 inheritance provisions in the original treaties or al-
6 lotment Acts, the ownership of many of the allot-
7 ments that have remained in trust status have be-
8 come fractionated into hundreds or thousands of in-
9 terests many of which represent less than 2 percent
10 of the total interest in the allotment.

11 (4) Congress has authorized acquisition of lands
12 held in trust for individual Indians and many of
13 these lands have become and continue to be
14 fractionated by subsequent inheritance.

15 (5) These fractional interests provide little or
16 no return to their beneficial owners and cost the
17 United States inordinate amounts in administrative
18 costs.

19 (6) In 1983, Congress enacted the Indian Land
20 Consolidation Act. Substantial numbers of 2 percent
21 or less fractional interests have escheated to tribes
22 pursuant to section 207 of the Indian Land Consoli-
23 dation Act. However, the United States Supreme
24 Court found the application of section 207 to the
25 facts presented in *Babbitt v. Youpee* (117 S.Ct.

1 727) to be unconstitutional. Thus, in the absence of
2 remedial legislation, the number of fractional inter-
3 ests will continue to grow.

4 (7) The problem of fractionation was caused by
5 Federal policy and required a Federal legislative so-
6 lution.

7 **SEC. 3. DECLARATION OF POLICY.**

8 It is the policy of this Act to—

9 (1) prevent the further fractionation of trust
10 lands;

11 (2) to consolidate fractionated interests and
12 ownership of those interests in Indian trust lands
13 into usable parcels;

14 (3) to vest beneficial title to such parcels in the
15 tribes on whose reservations the lands are located;
16 and

17 (4) to promote tribal self-sufficiency and self-
18 determination.

19 **SEC. 4. AMENDMENTS TO THE INDIAN LAND CONSOLIDA-**
20 **TION ACT.**

21 The Indian Land Consolidation Act (25 U.S.C. 2201
22 et seq.) is amended as follows:

23 (1) Section 202 is amended—

24 (A) by striking paragraph (2) and insert-
25 ing the following:

1 “(2) ‘Indian’ means a person who is a member
2 of an Indian tribe or a person who is eligible to be-
3 come a member of an Indian tribe at the time of the
4 distribution of the assets of a decedent’s estate;”;

5 (B) by striking “and” at the end of para-
6 graph (3);

7 (C) by striking the period at the end of
8 paragraph (4) and inserting a semicolon; and

9 (D) by adding at the end the following:

10 “(5) ‘heirs of the first or second degree’ means
11 parents, children, grandchildren, grandparents,
12 brothers, and sisters of the decedent; and

13 “(6) ‘Acquisition Fund’ means the fund created
14 pursuant to section 216.”.

15 (2) Section 203 is amended—

16 (A) by striking “section 5” and inserting
17 “sections 5 and 7”; and

18 (B) by inserting “or the creation of res-
19 ervations” after “land”.

20 (3) Section 205 is amended—

21 (A) by striking the colon before “*Provided*”
22 and inserting “. Interests owned by a tribe in
23 a tract may be included in the computation of
24 the 50 per centum ownership requirement.
25 Nothing”;

1 (B) by striking paragraph (3) and insert-
2 ing the following:

3 “(3) if a tribe does not have a land consolida-
4 tion plan approved pursuant to section 204, all pur-
5 chases and sales initiated under this section shall be
6 subject to approval by the Secretary.”.

7 (5) Section 206 is amended to read as follows:

8 **“SEC. 206. DESCENT AND DISTRIBUTION OF TRUST OR RE-**
9 **STRICTED LANDS; TRIBAL ORDINANCE BAR-**
10 **RING NONMEMBERS OF TRIBE FROM INHER-**
11 **ITANCE BY DEVISE OR DESCENT.**

12 “(a) TRIBAL PROBATE CODES.—Notwithstanding
13 any other provision of law, any tribe may adopt its own
14 code of laws to govern descent and distribution of trust
15 or restricted lands within that tribe’s reservation or other-
16 wise subject to that tribe’s jurisdiction. Such codes may
17 provide that, notwithstanding the provisions of section
18 207, only members of the tribe shall be entitled to receive
19 by devise or descent any interest in trust or restricted
20 lands within that tribe’s reservation or otherwise subject
21 to that tribe’s jurisdiction.

22 “(b) SECRETARIAL APPROVAL.—(1) A tribal code en-
23 acted pursuant to subsection (a), or amendments to such
24 codes, shall be subject to approval by the Secretary. The
25 Secretary shall not approve any code that does not prevent

1 or substantially reduce the further fractionation of trust
2 or restricted lands. Any code approved pursuant to this
3 subsection, or an amendment to such a code, shall not be-
4 come effective until the effective date of section 207. For
5 codes or amendments to a code enacted after the effective
6 date of section 207, the code or amendments shall not be
7 effective until at least six months after approval by the
8 Secretary of the code or amendments. All codes shall af-
9 fect only the estates of decedents whose death occurred
10 on or after the effective date of the code or the related
11 amendments to the code.

12 “(2) Repeal of any tribal code approved pursuant to
13 this subsection shall require the approval of the Secretary
14 and shall not be effective until at least six months after
15 such approval. The repeal of a tribal code shall affect only
16 the estates of decedents whose death occurred on or after
17 the effective date of the repeal.

18 “(c) PROBATE OF ESTATES IN TRIBAL COURT;
19 UNITED STATES NOT AN INDISPENSABLE PARTY.—(1) A
20 tribe with a probate code approved pursuant to subsection
21 (b) of this section may assume the responsibility for pro-
22 bating in tribal court the estates of decedents owning
23 lands or interests in lands on the tribe’s reservation, or
24 who own lands or interests in lands otherwise subject to
25 the tribe’s jurisdiction. The United States shall not be an

1 indispensable party to the proceeding in any probate pro-
 2 ceeding initiated by a tribe pursuant to this subsection.

3 “(2) A tribe that elects to probate estates in tribal
 4 court under paragraph (1) shall promptly notify the agen-
 5 cy of the Bureau of Indian Affairs that has jurisdiction
 6 over the tribe’s lands of the final distribution of a dece-
 7 dent’s interests in trust or restricted land.

8 “(3) If the Secretary determines that a tribe is not
 9 providing timely notice of the distribution of estates or
 10 that the Bureau of Indian Affairs’ ability to maintain ac-
 11 curate financial and land records is being adversely af-
 12 fected, the Secretary may, after 30 days written notice to
 13 the tribe and after providing the tribe with an opportunity
 14 to respond to the notice, reassume the duty of probating
 15 estates involving interests in trust or restricted land.”.

16 (6) Section 207 is amended to read as follows:

17 **“SEC. 207. DESCENT AND DISTRIBUTION; ESCHEAT OF**
 18 **FRACTIONAL INTERESTS.**

19 “(a) DESCENT AND DISTRIBUTION.—(1) Interests in
 20 trust or restricted lands may descend by testate or intes-
 21 tate succession only to Indians.

22 “(2) If a testator devises interests in the same parcel
 23 of trust or restricted land to more than one person, in
 24 the absence of express language in the devise to the con-

1 trary, the devise shall be presumed to create a joint ten-
2 ancy with right of survivorship;

3 “(3) If an estate passes by intestate succession, only
4 spouses and heirs of the first or second degree may inherit
5 interests in trust or restricted lands in that estate. All in-
6 terests in trust or restricted land passing by intestate suc-
7 cession shall create a joint tenancy with right of survivor-
8 ship in the heirs to the estate.

9 “(4) If a person who is prohibited by law from receiv-
10 ing an interest in trust or restricted lands is a surviving
11 spouse or child of a decedent—

12 “(A) any devise to such spouse or child shall be
13 presumed, unless a lesser estate is provided for in
14 the decedent’s will, to create a life estate, if such is
15 requested during the probate of the decedent’s estate
16 by the spouse or child or by the representative or the
17 spouse or child if the spouse or child is under a legal
18 disability; and

19 “(B) in the absence of a will, a life estate shall
20 be created for a spouse or child or a decedent, if
21 such is requested during the probate of the dece-
22 dent’s estate by the spouse or child or by the rep-
23 resentative or the spouse or child if the spouse or
24 child is under a legal disability;

1 “(5) If no individual is eligible to receive an interest
2 in trust or restricted lands, the interest shall escheat to
3 the tribe having jurisdiction over the trust or restricted
4 lands, subject to any life estate that may be created pursu-
5 ant to this subsection.

6 “(6) Upon the death of an individual holding an in-
7 terest in trust or restricted lands which are located outside
8 the boundaries of a reservation and which are not subject
9 to the jurisdiction of any tribe, such interest shall de-
10 scend—

11 “(A) testate or intestate succession in trust to
12 the spouse or heirs of the first or second degree of
13 the decedent; or

14 “(B) to any other devisees or heirs.

15 “(7) Upon the death of an individual holding an in-
16 terest in restricted lands issued pursuant to the Act of
17 May 17, 1906 (34 Stat. 197) or the Act of May 25, 1926
18 (44 Stat. 629) that are not subject to the jurisdiction of
19 any tribe, such interest shall descend—

20 “(A) in testate or intestate succession in re-
21 stricted status to the spouse or heirs of the first or
22 second degree of the decedent; or

23 “(B) to any other devisees or heirs.

24 “(b) ESCHEATABLE FRACTIONAL INTERESTS.—Not-
25 withstanding the provisions of subsection (a), no undivided

1 interest which represents 2 per centum or less of the total
 2 acreage in a tract of trust or restricted land shall pass
 3 by intestacy but shall escheat to the tribe on whose res-
 4 ervation the interest is located, or if the land is outside
 5 of a reservation, to the recognized tribal government pos-
 6 sessing jurisdiction over such land.

7 “(c) EFFECTIVE DATE.—The provisions of this sec-
 8 tion shall become effective 2 years after the date of the
 9 enactment of the Indian Land Consolidation Amendment
 10 Act of 1997, and shall apply only to those estates of dece-
 11 dents whose death occurred on or after such date.”.

12 (7) Section 208 is amended to read as follows:

13 **“SEC. 208. FULL FAITH AND CREDIT TO TRIBAL ACTIONS**
 14 **UNDER TRIBAL ORDINANCES LIMITING DE-**
 15 **SCENT AND DISTRIBUTION OF TRUST OR RE-**
 16 **STRICTED OR CONTROLLED LANDS.**

17 “In carrying out the responsibility to determine the
 18 heirs of trust and restricted lands of a tribe pursuant to
 19 the first section of the Act of June 25, 1910 (25 U.S.C.
 20 372), the Secretary shall apply the rules of devise and de-
 21 scent contained in the tribal probate code approved pursu-
 22 ant to section 206, and shall give full faith and credit to
 23 any probates conducted by a tribal court pursuant to an
 24 approved tribal probate code.”.

25 (8) Section 209 is amended to read as follows:

1 **“SEC. 209. CONVEYANCE AUTHORITY UPON SALE OR EX-**
2 **CHANGE OF TRIBAL LANDS; REMOVAL OF**
3 **TRUST STATUS OF INDIVIDUALLY OWNED**
4 **LANDS.**

5 “The Secretary shall have the authority to issue
6 deeds, patents, disclaimers, or such other instruments of
7 conveyance or transfer as may be needed to effectuate or
8 perfect a sale, partition, exchange, or transfer of tribal
9 lands and individual trust or restricted lands or interests
10 therein which are made pursuant to the terms of this Act
11 or of the first section of the Act of June 25, 1910 (25
12 U.S.C. 372), the Act of May 18, 1916 (25 U.S.C. 378),
13 section 7 of the Act of May 27, 1902 (25 U.S.C. 379),
14 the Act of May 29, 1908 (25 U.S.C. 404), or the Act of
15 March 1, 1907 (25 U.S.C. 405), including the authority
16 to eliminate the trust status, or remove restrictions on
17 alienation, of individually held lands or interests therein
18 as authorized by this Act or the first section of the Act
19 of June 25, 1910 (25 U.S.C. 372), the Act of May 18,
20 1916 (25 U.S.C. 378), section 7 of the Act of May 27,
21 1902 (25 U.S.C. 379), the Act of May 29, 1908 (25
22 U.S.C. 404), or the Act of March 1, 1907 (25 U.S.C.
23 405), and when requested by the individual Indian
24 owners.”.

25 (9) The Indian Land Consolidation Act is
26 amended by adding after section 212 the following:

1 **“SEC. 213. ACQUISITION OF FRACTIONAL INTERESTS.**

2 “(a) The Secretary is authorized to acquire, with the
3 consent of its owner and at fair market value, any frac-
4 tional interest in trust or restricted lands. The Secretary
5 shall give priority to the acquisition of fractional interests
6 representing 2 per centum or less of a parcel of trust or
7 restricted land. The Secretary shall hold in trust for the
8 tribe that has jurisdiction over the fractional interest the
9 title of all interests acquired pursuant to this section.

10 “(b) Any tribe with a land consolidation plan ap-
11 proved by the Secretary pursuant to section 204 may
12 apply to the Secretary to enter into an agreement with
13 the Secretary to implement the program to acquire frac-
14 tional interests under subsection (a). In addition to the
15 requirements set forth in sections 204 and 205, tribes ap-
16 plying for Federal funding of tribal land consolidation
17 plans shall include in their applications the following:

18 “(1) A description of the tribe’s dispute resolu-
19 tion mechanisms and an assurance that individuals
20 with interests in trust or restricted land will have a
21 forum to challenge any value determinations made
22 by the tribe in implementing its land consolidation
23 plan.

24 “(2) A financial statement indicating whether
25 the tribe has any resources to contribute to the fi-

1 nancing of the fractional interest acquisition pro-
2 gram and the amount of that contribution.

3 “(3) A statement that none of the Federal
4 money received to implement the fractional interest
5 acquisition program will be used to finance the ac-
6 quisition of land by individual tribal members.

7 “(4) A commitment to pay any rents or profits
8 from, or the proceeds of sales of fractional interests
9 acquired pursuant to subsection (a), to the Secretary
10 in accordance with section 214.

11 “(c) Any agreement negotiated pursuant to this sec-
12 tion shall not be subject to Public Law 93–638, or any
13 regulations promulgated thereunder, but shall be subject
14 solely to the provisions of this Act and the terms and con-
15 ditions of such agreement. All such agreements shall pro-
16 vide that if funds made available to a tribe for the acquisi-
17 tion of fractional interests remain unexpended for 2 years,
18 the funds shall revert to the Acquisition Fund.

19 **“SEC. 214. ADMINISTRATION OF ACQUIRED FRACTIONAL**
20 **INTERESTS; DISPOSITION OF PROCEEDS.**

21 “(a) A tribe receiving a fractional interest pursuant
22 to sections 207 and 213 may, as a tenant in common with
23 the other owners of the trust or restricted land, lease the
24 interest, sell the resources, consent to the granting of

1 rights-of-way, or engage in any other transaction affecting
2 the trust or restricted land authorized by law.

3 “(b) Until the purchase price paid by the Secretary
4 pursuant to this Act for an interest in trust or restricted
5 land has been recovered, any lease, resource sale contract,
6 right-of-way, or other transaction affecting the interest
7 shall contain a clause providing that all revenue derived
8 from the interest shall be paid to the Secretary. The Sec-
9 retary shall deposit all such revenue in the Acquisition
10 Fund.

11 “(c) Notwithstanding section 476 of title 25, United
12 States Code, or any other provision of law, so long as a
13 tribe is a tenant in common with individual Indian land-
14 owners on land acquired pursuant to sections 207 and
15 213, the tribe shall enter into any transaction con-
16 templated by this section if a majority of the remaining
17 landowners consent to the transaction. If the tribe does
18 not consent, the Secretary shall consent to the transaction
19 on behalf of the tribe. For leases of allotted land that are
20 authorized to be granted by the Secretary, the tribe shall
21 be treated as if it were an individual Indian landowner.

22 **“SEC. 215. ESTABLISHING FAIR MARKET VALUE.**

23 “For the purposes of this Act, the Secretary may de-
24 velop a reservation-wide system for establishing the fair
25 market value of various types of lands and improvements

1 which may govern the amounts offered for the purchase
2 of interests in trust or restricted lands pursuant to section
3 213.

4 **“SEC. 216. ACQUISITION FUND.**

5 “The Secretary shall establish an Acquisition Fund
6 to carry out this Act purposes of section 213 and to collect
7 all revenues received from the lease, permit, or sale of re-
8 sources from interests in trust or restricted lands trans-
9 ferred to tribes by the Secretary pursuant to section 213.
10 Until the purchase price of an interest acquired pursuant
11 to section 213 has been recovered, all proceeds from
12 leases, permits, or resource sales derived from the interest
13 shall be deposited in the Acquisition Fund and shall, as
14 specified in advance in appropriations Acts, be available
15 for the purpose of acquiring additional fractional interests.

16 **“SEC. 217. DETERMINATION OF RESERVATION BOUND-**
17 **ARIES AND TRIBAL JURISDICTION.**

18 “Determinations of whether or not a parcel of land
19 within an Indian reservation is otherwise subject to a
20 tribe’s jurisdiction shall be made by the Secretary. Review
21 of these determinations shall be in the United States dis-
22 trict court where the land is located.

23 **“SEC. 218. REPORTS TO CONGRESS.**

24 “Three years after the date of the enactment of the
25 Indian Land Consolidation Amendments Act of 1997, and

1 annually thereafter, the Secretary shall file a report indi-
2 cating the number of fractional interests acquired and the
3 impact of the reduction in the number of fractional inter-
4 ests on the Bureau of Indian Affairs' financial and realty
5 recordkeeping systems. The Secretary, after consultation
6 with the tribes, shall recommend any amendments or addi-
7 tional legislation necessary to make meaningful reductions
8 in the number of fractional interests.

9 **“SEC. 219. APPROVAL OF LEASES, RIGHTS-OF-WAY, AND**
10 **SALES OF NATURAL RESOURCES.**

11 “The Secretary may approve any lease, right-of-way,
12 sale of natural resources, or any other transaction affect-
13 ing individually owned trust or restricted lands that re-
14 quires approval by the Secretary, if the owners of a major-
15 ity interest in the trust or restricted lands consent to the
16 transaction and the Secretary determines that the trans-
17 action is in the best interest of the Indian owners. Upon
18 such approval, the transaction shall be binding upon the
19 owners of the minority interests in the trust or restricted
20 land and all other parties to the transaction to the same
21 extent as if all of the Indian owners had consented to the
22 transaction.

1 **“SEC. 220. REAL ESTATE TRANSACTIONS INVOLVING**
2 **NONTRUST LANDS.**

3 “Notwithstanding any other provision of law, any
4 tribe may, on the same basis as any other person, buy,
5 sell, mortgage, or otherwise acquire or dispose of lands
6 or interests in land acquired after the effective date of the
7 Indian Land Consolidation Amendments Act of 1997, and
8 which are not held in trust or subject to a preexisting Fed-
9 eral restriction on alienation imposed by the United
10 States, without the approval of the Congress or of the Sec-
11 retary and such disposition shall create no liability on the
12 part of the United States.”.

13 **SEC. 4. NOTICE.**

14 Not later than 180 days after the enactment of this
15 Act, the Secretary shall, to the extent practicable, notify
16 tribes and individual landowners of the provisions of this
17 Act. Notice pursuant to this section shall list estate plan-
18 ning options available to holders of trust or restricted
19 lands.

○